IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9579 of 2001
with
Civil Application No. 496 of 2005
with
SPECIAL CIVIL APPLICATION No 12087 of 2002
with
Special Civil Application No. 4439 of 2002
to
Special Civil Application No. 4484 of 2002
with
Special Civil Application No. 2683 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHOKBHAI J ADATIYA & Others.

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 9579 of 2001
MR Percy KAVINA for Petitioner No. 1-47
MR JJ YAJNIK for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 13/05/2005

CAV JUDGEMENT

As common question of law and facts arise in this group of petitions, these petitions are being disposed of by this common judgment and order.

2. In all these petitions, the respective petitioners have prayed to declare that the respondent Railway authorities have no right to recover any amount as enhanced or additional licence fees/charges from the petitioners from 1.4.1985 to 30th September 2001. They have also further prayed for an appropriate declaration that any such notice, act or action to collect the same is illegal.

3. The petitioners are carrying on the business of running Vegetarian Refreshment Rooms, Sweet-Meat Stalls, Food Stalls, Tea Stalls, Food Lorries, Fruit Trollies etc., at various Railway stations under the jurisdiction of the Divisional Commercial Superintendent, Western Railway, Bhavnagar Division, Bhavnagar and they were/are given licences by the respondent authorities which entitle them to carry on their business on the Railway property on payment of licence fees. It is the case of petitioners that they are carrying on their business for a minimum of 30 years and that agreements of all the petitioners are in standard form and that they do not possess signed agreements which are for a period of 5 years as the same are in exclusive custody of the respondent No.2 Railway authority. It is the case of the respective petitioners that the agreement of all the petitioners were expiring on or about at the end of April 2002 and that all the agreements were entered into some time in April 1992 and that different amounts of licence fees, water charges, cess charges, rent and additional fees etc., have been fixed by mutual agreement in this agreements which the respondent No.2 has entered into with the petitioner. It si the case of the petitioners that the respondents are habituated to making unilateral changes in the midterm of the contract thereby prejudicially affecting them. It is also the case of the petitioners that earlier the petitioners had preferred Special Civil Application No. 8387 of 1983 whereby the petitioners challenged the efforts of the respondents to retrospectively collect the amount as arrears of licence fees for the years 1971-1975 by issuing notice in the year 1982; the said petition came to be disposed of by order dated 25th January 1985, and while disposing of the aforesaid petition this Court directed the respondents to

decide the representation of the petitioners against the retrospective increase; and that some time in the year 1987 the respondents decided the representations of the petitioners and had waived increased collection with retrospective effect for the years from 1971 to 1975. Thus it is the case of the petitioners that the respondents acknowledged that they could not have increased the licence fees/charges retrospectively. It is the case of the petitioners that on or about 28th August 2001 the petitioners received a notice from the respondents asking them to pay revised lumpsum fees for 3 periods (i) with effect from 1.4.1985; (ii) with effect from 1.4.1990; and (iii) with effect from 1.4.1995. It is also the case of the petitioners that the respondents have issued further demands for the period from 1.7.1999 to 30th September 2001 vide communication dated 8.10.2001 by which the respondents have raised demand of revised licence fees on turnover basis. The aforesaid communication/notices are the subject matter of the present Special Civil Applications.

4. Shri Percy Kavina, learned advocate appearing on behalf of the petitioners had submitted that increase of licence fees has been demanded by the respondents from the petitioners without any prior show cause notices and they are in breach of principles of natural justice as the amounts have been demanded by the respondents from the petitioners without allowing the petitioner to show cause against the increased levy. It is also further submitted that the efforts on the part of the respondents to unilaterally revise the amount of licence fees is impermissible under the law of contract. It is also further submitted that the backdated retrospective levies are impermissible. Shri Kavina had further submitted that once the agreement is entered into between the parties and the licence fee is fixed for the validity period of that licence, it is not open for the respondents to enhance the licence fees during the validity of the said agreement. It is also further submitted that during the continuance of the existing contract neither party has the right to unilaterally change the terms of contract. As such the learned advocate appearing on behalf of the petitioners has argued only one point with regard to revising the lumpsum licence fees during the continuance of the existing contract between the petitioners and the Railway authorities and that too retrospectively. It is required to be noted that in the Special Civil Applications there is no challenge to the revising the licence fees of sales turnover from Catering contractors with effect from 1.7.1999 and the only challenge in the main Special Civil

Applications is challenging the demand made by the respondents to recover the amount as enhanced or additional licence fees/charges from the petitioners from 1.4.1985 to 30th September 2001.

5. On the other hand, the respondents have opposed the present Special Civil Applications. An affidavit-in-reply is filed on behalf of the respondents. Shri JJ Yagnik, learned advocate appears on behalf of the respondent Railway authorities. It is submitted in the affidavit-in-reply that the contract is renewed every 5 years based on performance of the contractor during the contractual period. It is also further submitted that it is not correct to say that the respondents are habituated of making unilateral changes in midterm of contract. It is submitted that the petitioners have specifically agreed in Clause 1 of the agreement that the charges are subject to revision by administration as and when considered necessary. It is also further submitted that when the respondents have increased the rates of eatables available with the petitioners and the petitioners are charging more from the public according to the provisions of the agreement the respondents have right to revise the rate of licence fee taken from the contractors. It is also further submitted that if during the contract period the rates of eatables etc., are increased and the petitioners were accordingly charging from the public the petitioners have no objection at that time in changing the terms of contract but when the licence fees are revised the petitioners are raising objections which is not permissible and the petitioners are playing hot and cold. It is also further submitted that if there is any difference between the petitioners and the respondents, as per the agreement provisions the matter has to be referred to sole arbitration of D.R.M. It is further submitted that the revision was due from time to time and these revisions have been effected on all private catering licence of Indian Railways and not to the petitioners alone. It is further submitted that the demand raised by the petitioners for demand of revision from time to time is legal, valid and just. It is further submitted that the revision has been effected from time to time as agreed by the petitioners in the agreement for which there is a specific provision. It is further submitted that revision of fees is based on sales turnover and not related to additional services. It is further submitted that when rates of eatables have been revised from time to time the respondents have a right to revise the rates of licence fees based on sales turnover. It is further submitted that the revision of licence fees has been done on the basis of sales turnover given by the

petitioners themselves. It is further submitted that after obtaining sales turnover the licence fees at the rates prescribed by the Railway administration were calculated and they advised the petitioners for making payment. It is further submitted that the petitioners have concealed the very fact of giving sales turnover to the Railway administration for fixation of licence fees. It is further submitted that in fact the petitioners have been requested to pay the difference and if it is not possible to pay the difference in lumpsum they have been requested to pay in installments but rather than doing so and exhausting the remedy available to them they have preferred the present Special Civil Applications. It is also further submitted that an identical case was before the High Court of Madhya Pradesh in M/s. M.T. & Sons and Others Vs. Union of India, which is reported in AIR 2001 M.P. 2014, the Madhya Pradesh High Court dismissed the said petition. It is also further submitted that in the same fact situation on a petition, being petition No. 858 of 2001 filed by one Madhya Pradesh Nyay Vanchit Sangh against Western Railway Catering Services before the High Court of Madhya Pradesh in its Bench at Indore, the Division Bench of the High Court of Madhya Pradesh dismissed the said petition following the Judgment reported in AIR 2001 M.P. 2014. It is also further submitted that not only that but at the time of renewal agreements have been executed with forwarding notice that there shall be recovery of dues with retrospective effect. Shri Yagnik, learned advocate appearing for the respondents has further submitted that so far as agreements for running Stalls are concerned it is so provided that the charges are subject to revision by the administration as and when considered necessary. He has also further submitted that so far as the agreements for sale of fruits, sweetmeat, tea and other articles within Railway premises by the vendors are concerned in Clause 29-A itself it is stipulated that the licensee further agrees to payment of any increase in the rate fixed by the administration from time to time during the continuance of the agreement and also agrees to pay administration licence fees and rental at the rates revised by the administration pursuant to its clause with effect from the day the revised rate has been brought into force notwithstanding that the licensee is informed of the revised licence fee and rental after the day from which such revised rates become effective.

5.1. Shri Yagnik, learned advocate appearing for the respondents has further submitted that the identical question came to be considered by the Kerala High Court involving identical contentions, and the Kerala High

Court by its judgment and order dated 3rd December 2001 after considering the same while dismissing the petition has held that the revised policies are reasonable and valid. It is also further submitted that against the said judgment and order passed by the Division Bench of the Kerala High Court dated 3rd December 2001 Civil Appeal No. 4897 of 2002 and other cognate appeals were filed before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India vide order dated 29th March 2005 has dismissed all the appeals and confirmed the judgment and order passed by the Kerala High Court. It is further submitted that before the Hon'ble Supreme Court and the Kerala High Court the challenge was with regard to retrospective enhancement of licence fees for the period from 1.8.1990 to 1.8.1995. It is also further submitted that even other licence-holders like the petitioners along with other licenceholders within the jurisdiction of respondent No.2 had preferred Special Civil Applications No. 14940 of 2004 and 14240 of 2004 before this Court and the learned Single Judge of this Court [Coram: Mr. Jayant Patel, J.] has dismissed both the aforesaid Special Civil Applications relegating the respective petitioners to file a civil suit. It is further submitted that against the judgment and order passed by the learned Single Judge of this Court in Special Civil Application No. 14940 of 2004, Letters Patent Appeal No. 341 of 2005 was filed and the same came to be withdrawn on 29th March 2005 and therefore it is requested to dismiss the present Special Civil Applications.

6. In Rejoinder, Shri Percy Kavina, learned advocate appearing on behalf of the petitioners had submitted that the judgment of the Hon'ble Supreme Court dated 29th March 2005 is not applicable to the facts of the present case as according to him in the agreement itself there was a stipulation that the licence fee is provisional and would be subject to revision during pendency of the contract. It is also further submitted by Shri Kavina that even if in the agreement there are conditions with regard to allowing the Railway administration to unilaterally change and/or modify the licence fee retrospectively at any time, and the same is against the public policy and is a nullity. In support of his aforesaid submission, Shri Kavina has relied upon the following Judgments;

1. Gherulal Parakh V. Mahadeodas Maiya and Others - AIR 1959 S.C. Page 781;

2. National Fertilizers Vs. Puran Chand Nangia - (2000) 8 SCC Page 343 (Para 23);

3. Central Inland Water Transport Corporation Ltd. and another v. Brojo Nath Ganguly and another - AIR 1986 S.C. 1571;

Shri Kavina has further submitted that as held by the Hon'ble Supreme Court in the case of Union of India Vs. Amrit Lal Manchanda and another, reported in AIR 2004 S.C. 1625 Page 1625,(Para 18 at P. 1630), each case is required to be considered according to its own merits and demerits and independently on its facts and therefore merely because the learned Single Judge of this Court has dismissed the aforesaid two Special Civil Applications, i.e., Special Civil Application No. 14940 of 2004 and 14240 of 2004 relegating the petitioners to file Civil Suit this Court is not precluded from deciding these Special Civil Applications on merits if it is found that the learned Single Judge has not considered some points. The question with regard to clause stipulated in the agreement with regard to allowing the Railway authorities to revise the fee retrospectively being a nullity and against the public policy has not been considered and that the Judgment of the Hon'ble Supreme Court with regard to writ petition being maintainable even in a contractual mater has not been considered by the learned Single Judge. Shri Kavina, learned advocate appearing for the petitioners has also relied upon the judgment of the Hon'ble Supreme Court in the case of Bhavnagar University Vs. Palitana Sugar Mills Ltd., reported in AIR 2003 S.C. 511 in support of his submission that each case depends upon its own case and little difference in facts/additional facts may affect precedential value of decision. Shri Kavina has therefore requested to allow the present Special Civil Applications. For that purpose in support of his aforesaid submissions with regard to maintainability of a petition under Article 226 even in a contractual matter he has relied upon the judgment of the Hon'ble Supreme Court of India in the case of ABL International Ltd. And Another Vs. Export Credit Guarantee Corporation of India Ltd And Others, reported in (2004) 3 SCC 553. Shri Kavina had made it clear that the only contention raised on behalf of the petitioners is with regard to revising the licence fees during the continuance of existing contract/agreement.

7. Heard the learned advocates appearing on behalf of the parties. The petitioners are licensees who are

served with the notices for recovery of the revised lumpsum fee for the period from 1.4.1985 to 30th June 1999 and for the period from 1.7.1999 to 30th December 2001 by demand notices dated 16th August 2001 and 8.10.2001 respectively. By notices dated 16th August 2001 the petitioners are directed to pay the lumpsum licence fee at Rs. 1489 p.a. for the period between 1.4.1985 to 31st March 1990; at Rs. 1705 p.a. for the period between 1.4.1990 to 31st March 1995; and at Rs. 2353.80 p.a. for the period between 1.4.1995 till 30th June 1999 and the calculation is at Annexure 'B' to the petition. By communication dated 8.10.2001 there is a further revision of licence fees of catering contractor with effect from 1.7.1999 as per the revised licence fee (provisional) of sales turnover of catering contractors. It is required to be noted that since 2001 all the petitioners are paying the licence fee as per the revised licence fee. The short question which is raised in the present Special Civil Applications is whether the Railway authorities are having jurisdiction and/or authority to revise the licence fees during the continuance of the existing contract/agreement or not. It is required to be noted that apart from the fact that in the agreement itself it is so stipulated that the charges mentioned in the said agreement are subject to revision by the administration as and when considered necessary (agreement for stall/table) and that the licensees further agreed to pay any increase in the fees revised by the administration from time to time during the continuance of the agreement and also agreed to pay the licence fees and rental at the rates revised by the administration with effect from the date the revised rate has been brought into force. (Clause 29-A of the agreement for sale of fruits etc., by vendors), at the time of renewal of the licence itself at the relevant time all the petitioners were informed that the licence fee, water charges are under revision with effect from 1985 and that they will remit the arrears of above charges with retrospective effect as they may be advised in due course. The forwarding letter along with the renewal of agreement and the relevant condition reads as under;

> "The licence fee, water charges are under revision with effect from 1985. Cess charges is also subject to revision by Railway administration. You will have to remit the arrear of above charges with retrospective effect which will be advised to you in due course for which you have already been informed during the

meeting of screening committee held for the purpose of renewal of catering/vending contracts, w.e.f. 01/06/1997. You agreed for the same and gave written consent to remit the arrears of above charges on demand with retrospective effect."

Similar conditions were also imposed at the time of renewal of earlier agreements also. An identical question came to be considered by the Kerala High Court, and while confirming the judgment and order passed by the learned Single Judge of the Kerala High Court the Division Bench of Kerala High Court in its judgment and order dated 3.12.2001 has held that there has not been any demand with retrospective effect as attempted to be canvassed. The Division Bench of the Kerala High Court has also upheld the revised policy as reasonable and valid. Against the judgment and order passed by the Kerala High Court dated 3rd December 2001, Civil Appeal No. 4898 of 2002 and other cognate appeals were filed. While dealing with group 'A' cases which were similar to the facts of the present Special Civil Applications and while dismissing the Civil Appeals, the Hon'ble Supreme Court has held as under;

"In Group A cases the only appeal which survives for consideration is Civil Appeal No. 4897 of 2002. In this case, the appellant-N.B. Krishna Kurup filed the writ petition in the High Court challenging the fixation of license fee of refreshment rooms (VRR) being run by the appellant at Palghat. The fixation of license fee for the period 1.8.1995 to 31.7.2000 had been challenged on the ground that the increase had been made retrospectively which was against the terms of the agreement. The Division Bench, by the impugned judgment, dismissed the writ petition by observing that there has been no retrospective enhancement of licence fee. The license of the appellant was renewed for a period of five years w.e.f. 1.8.1995 to 31.7.2000 and the license fee was fixed at Rs. 17,000/- per annum provisionally with the stipulation that the license fee fixed provisionally would be subject to revision during the tenure of the contract and the revised license fee will be operative with retrospective effect from the commencement of the financial year in which the revision takes place. The contention raised by the appellant is that

since the rates were revised on 4.2.2000, the retrospective enhancement could be for the financial year starting from 1.4.1999 to 31.7.2000 only and not from 1.8.195 till 31.3.2000 as has been done by the Indian Railways. We do not find any substance in this submission. Appellant was the existing licensee as on 31.07.1995 and his license was renewed with effect from 01.08.1995 for a period of five years i.e. 31.07.2000. The license fee was fixed at Rs. 17,000/- per annum with the stipulation that the license fee would be provisional and would be subject to revision during the pendency of the contract and the revised license fee shall come into operation with retrospective effect from the commencement of the financial year in which the revision takes place. License fee was fixed provisionally at the time of the renewal of the license because assessment of the actual sales had not been made. After assessing the quantum of sales made, the Indian Railways proposed the enhancement. Against this enhancement appellant filed representations/appeals before the Railway Board. The Railway Board ordered status quo to be maintained during the pendency of the presentations/appeals. The revised fee could not be charged because of the order of status quo passed by the Railway Board. Soon after the dismissal of the representations/appeal the enhanced license fee came into operation with effect from the date of the renewal of the license i.e. w.e.f. 01.08.1995. enhancement has not been made with retrospective effect as has been argued before us. We agree with the view taken by the High Court. For the reasons stated above, we find no merit in this appeal and dismiss the same. Parties shall bear their own costs."

7.1. Considering the facts of the present Special Civil Applications along with the facts which were before the Hon'ble Supreme Court (Group 'A' cases) in the present group of petitions also at the relevant time of renewal of the licence the petitioners/licensees were informed that the licence fees and water charges are under revision with effect from 1985 and that they will have to remit the arrear of above charges with retrospective effect who will be advised in due course for which they were already informed during the meeting

of Screening Committee held for the purpose of renewal of catering and that they have agreed for the same and gave written consent to remit the arrears of above charges on demand with retrospective effect. Under the circumstances it is to be considered and held that the licence fee which was charged/fixed at the relevant time, i.e. at the time of renewal of licence/agreement was not final and was subject to revision with effect from 1985 and all the petitioners not only were informed that they will have to remit the arrears of revised charges which was under revision with effect from 1985 with retrospective effect who will be advised in due course but all the petitioners and the licensees have also agreed for the same and had given written consent to remit the arrears of above charges on demand with retrospective effect. In that view of the matter and considering the judgment of the Hon'ble Supreme Court dated 29th March 2005 passed in Civil Appeals No. 4897 of 2002 and other cognate matters, there is no substance in the present Special Civil Applications and the same are required to be dismissed. In view of the above facts and the finding arrived at that the facts of the present Special Civil Applications are similar to the facts of Civil Appeal No. 4897 of 2002 before the Hon'ble Supreme Court as such it is not necessary for this Court to go into and deal with the contentions on behalf of the petitioners with regard to the conditions imposed in the agreement more particularly in Clause 1 and Clause 29-A by which it is mentioned that the charges mentioned in the agreement are subject to revision by the administration as and when considered necessary and that they can recover the revised charges retrospectively at any time being against the public policy or not and/or a nullity or not is not required to be considered as it is found that the case of the petitioners are squarely covered by the Judgment of the Hon'ble Supreme Court rendered in Civil Appeal No. 4897 of 2002 and other cognate matters. Similarly, the submission on behalf of the petitioners, to take a different view contrary to the view taken by the learned Single Judge of this Court rendered in Special Civil Applications No. 14940 of 2004 and 14240 of 2004 by which the learned Single Judge has not entertained the aforesaid two Special Civil Applications by holding that as the matter is in the realm of contractual obligation the petitions are not required to be entertained and the petitioners are required to file a Civil Suit, is also not required to be considered in view of the Judgment of the Hon'ble Supreme Court. Accordingly, the contention of the petitioners that inspite of the fact that the matter is in the realm of contractual obligation in a given case a petition is

maintainable under Article 226 of the Constitution of India, is not dealt with and in fact the present Special Civil Applications are considered on merits rather than relegating the petitioners to file a Civil Suit.

8. For the reasons stated hereinabove, and, more particularly, the Judgment of the Hon'ble Supreme Court of India dated 29th March 2005 in Civil Appeal No. 4897 of 2002, and considering the communication issued and conditions imposed while renewing the licence to the effect that the licence fee charged/fixed at the time of renewal is under revision with effect from 1985 and that the licensee has to remit the arrear of above charges with retrospective effect which they will be advised to remit in due course for which the respective licensees were informed during the meeting of Screening Committee held for the purpose of renewal of catering/vending contract and that even the respective petitioners/licensees have agreed for the same and gave written consent to remit arrear of above charges on payment with retrospective effect, all the present Special Civil Applications require to be dismissed and are accordingly dismissed. The ad-interim relief granted earlier is vacated forthwith. It will be open for the petitioners to move an appropriate application before the appropriate authority for reasonable installments which may be considered by the Railway authorities sympathetically.

9. With these observations and directions, Rule is discharged in each of the Special Civil Application. No order as to costs.

10. In view of dismissal of all the main Special Civil Applications, no orders on the Civil Application No. 496 of 2005.

{ M.R. Shah, J. }
rmr.

At this stage, learned advocate appearing on behalf of the petitioners requested to extend the ad-interim relief granted earlier. In the facts and circumstances of the case, the ad-interim relief earlier granted is directed to be continued upto 15th June 2005.

Date: 13.5.2005. { M.R. Shah, J. }

rmr.